

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000515-001 DT

11/17/2011

COMMISSIONER ROD J. COFFEY

CLERK OF THE COURT

H. Beal

Deputy

CAMBRIC COURTS
U. S. COLLECTIONS WEST

ALAN H ZIMMERMAN

v.

TERRY NUNNALLY (001)

TERRY NUNNALLY

1859 E SESAME ST

TEMPE AZ 85283

REMAND DESK-LCA-CCC

SAN MARCOS JUSTICE COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number CV0502256

Appellant Terry A. Nunnally appeals from the San Marcos Justice Court's March 14, 2011 Order in which the trial court denied Appellant's Motion to Deny Renewal of Judgment. On April 21, 2005, a Judgment was entered against Appellant and in favor of Cambric Courts. In that Judgment, Cambric Courts was awarded monetary damages in the amount of \$3,101.20 and possession of certain premises that Appellant had occupied as a tenant. Cambric Courts then executed an Assignment through which it assigned its rights under that Judgment to Appellee U.S. Collections West, Inc. On February 10, 2010, Appellee filed an Affidavit of Renewal of Judgment to renew the Judgment against Appellant.

Appellant argues that the renewal of the Judgment is defective and void for the following reasons: 1) the Assignment is invalid because it is not acknowledged and is not a contract; 2) Appellee is not and never was a party to the case because no valid assignment of the Judgment was filed with the trial court; and 3) the Affidavit of Renewal did not conform to the requirements of A.R.S. § 12-1612.

I. THE ASSIGNMENT IS VALID.

Appellant contends that the Assignment is invalid because it was not acknowledged. She relies on A.R.S. §§ 44-1031(B) and 47-3204 for support for her position that an acknowledgement of the assignment was required. Both statutes are inapplicable. A.R.S. § 44-

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1031(B) applies to “assignments for the benefit of creditors,” which is an insolvent debtor’s assignment to or for the benefit of its creditors. No assignments by Appellant, the Judgment-Debtor, are at issue so that statute is inapplicable. A.R.S. § 47-3204 governs indorsements on negotiable instruments. That statute does not apply to assignments of judgments or the assignment of rights under ordinary contracts. Accordingly, Appellant’s contention that the Assignment is invalid because it was not “acknowledged” is without merit.

Appellant also argues that the Assignment is not a valid contract. Cambric Courts has not challenged the validity of the Assignment. Appellant does not have standing to challenge the validity of the Assignment. And, nothing in the record supports Appellant’s position on this issue. On its face, the Assignment appears to be a valid contract through which Cambric Courts assigned its rights under the Judgment to Appellee for “legal consideration.” Accordingly, Appellant’s claim that the Assignment is not a valid contract is without merit.

II. THE ASSIGNMENT WAS PART OF THE COURT’S RECORD EVEN THOUGH IT WAS NOT NECESSARY.

The trial court’s records indicated that a notice of the Assignment of the Judgment to Appellee was filed with trial court even though the trial court’s file did not include a copy of that notice. Appellant asserts that those records are insufficient and that because the Assignment purportedly was not filed with the Court, the Affidavit of Renewal is invalid. Appellant has cited no persuasive legal authorities that support the proposition that an assignment of a judgment must be filed with the trial court that entered the judgment. The validity of the Assignment is not affected by whether it was filed with the Court. While A.R.S. § 12-1612(B) requires that the identity of the current holder of a judgment be identified in an affidavit of renewal with an explanation regarding how that party came to be the owner of the judgment, there is no requirement that a notice of an assignment of a judgment be filed with the court. As explained below, although the Affidavit of Renewal does not explain how Appellee became the owner of the Judgment, the Affidavit of Renewal identifies Appellee as the current judgment creditor.

III. THE AFFIDAVIT OF RENEWAL IS VALID.

A.R.S. § 12-1612(B) sets forth the information that is to be included in affidavits of renewals of judgments. The Affidavit of Renewal that was filed by Appellee includes most, but not all of the information that is required by A.R.S. § 12-162(B). The Affidavit of Renewal does not mention Cambric Courts. Nor does it explain how Appellee became the owner of the Judgment. Appellant argues that those deficiencies render the Affidavit of Renewal ineffective. In essence, Appellant is seeking to take advantage of technical defects in the Affidavit of Renewal in an effort to avoid having to pay the Judgment.

Arizona courts have recognized that when determining the validity of an affidavit of renewal that includes errors or omissions, “some errors in the affidavits filed may not be considered fatal if they are not misleading.” *J.C. Penney v. Lane*, 197 Ariz. 113, 119, 3 P.3d

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1033, 1039 (App. 1999). Indeed, “if the information is capable of being ascertained from the face of the renewal affidavit, the technical omission or errors in the affidavit will not defeat the renewal of the judgment.” *Weltsch v. O’Brien*, 25 Ariz.App. 50, 53, 540 P.2d 1269, 1272 (App. 1975). The main purposes of the statutes governing the renewal of judgments are to provide notice to the judgment debtor and interested parties of the identity of the judgment and the judgment creditor holding that judgment so that payment of the judgment can be properly made. *Id.*

Appellant acknowledges that she had notice of the filing of the Affidavit of Renewal and she clearly understands which Judgment was being renewed. The omissions of the name of the original judgment creditor and an explanation regarding how the Judgment was assigned to Appellee do not render the Affidavit of Renewal misleading. Moreover, those omissions do not defeat the purposes of identifying the Judgment that is being renewed and the identity of the current holder of the Judgment. Both the identity of the Judgment and identity of the current judgment creditor are clearly set forth in the Affidavit of Renewal. Because the Judgment is the only one that was entered under the trial court’s case number that is assigned to this case, the identity of the original judgment creditor and the fact that the Judgment was assigned are both ascertainable from the Court’s records. Accordingly, the Affidavit of Renewal is effective.

IV. ATTORNEYS’ FEES

Pursuant to Rule 13 of the Superior Court Rules of Appellate Procedures, Appellee has requested an award of attorneys’ fees and costs at the trial court and appellate court levels. This Court has jurisdiction to award attorneys’ fees and costs on appeal only. An award of attorneys’ fees under the circumstances of this case is discretionary. Because Appellee’s omissions on the Affidavit of Renewal gave rise to this appeal, the Court denies Appellee’s request for an award of its attorneys’ fees, but the Court will award Appellee its costs on appeal.

IT IS ORDERED affirming the trial court’s denial of Appellant’s Motion to Deny Renewal of Judgment and remanding this matter to the San Marcos Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Rodrick J. Coffey
THE HON. RODRICK J. COFFEY
JUDICIAL OFFICER OF THE SUPERIOR COURT